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09/975,088	10/10/2001	Frederick Allan Hall	3265-011733	7688

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EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/975,088

Applicant(s)

HALL, FREDERICK ALLAN

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 15-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Request for Continued Examination***

A request for continued examination under 37 CFR 1.114 including the fee set forth in 37 CFR 1.17(e) was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17 (e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 26, 2005 has been entered.

### ***Claim Numbering***

Applicant misnumbered the last five claims 16-20. These claims have been renumbered by the examiner 18-22 so as to comply with 37 CFR 1.121 and sequentially follow the first claim 17. Any claim amendments must include a claim listing with the proper numbering as indicated herein.

### ***Drawing Objections***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the barrel "slidable along the gate" (claims 2, 16); the barrel "screw threadedly mounted on the gate" (claim 3); "the barrel is a double locking barrel" (claim 4); "the barrel is a triple locking barrel" (claim 15); the barrel is both a triple locking barrel as required by claim 15 and "is threadedly mounted on the gate" (claim 17) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 2-4 and 15-22 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Applicant has no showing whatsoever of how the barrel is slidable on the gate as required by claim 2 so as to indicate to one having ordinary skill in the art how to make and use the device so that the barrel is both slid and rotated as required by claim 1. Applicant has no showing whatsoever of how the barrel is screw threadedly mounted on the gate as required by claim 3 so as to indicate to one having ordinary skill in the art how to make and use the device so that the barrel is both slid and rotated as required by claim 1. A nominal recitation of the barrel being screw threaded does not show how the device is constructed so as to both be slid and rotated. Applicant has no showing whatsoever of how the barrel is constructed so as to be a double locking barrel as required by claim 4 so as to indicate to one having ordinary skill in the art how to make and use the device so that the barrel is both slid and rotated as required by claim 1. A nominal recitation of the barrel being double locking does not show how the device is constructed so as to both be slid and rotated. There is no indication of how the barrel is double locked or what structure provides the double locking. Applicant has no showing whatsoever of how the barrel is constructed so as to be a triple locking barrel as required by claim 15 so as to indicate to one having ordinary skill in the art how to make and use the device. A nominal recitation of the barrel being triple locking does not show how the device is constructed. Applicant's figures show absolutely no structure

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of a threaded connection, a double locking or triple locking securement and the specification only nominally recites these words. The figures show nothing beyond the outside of the barrel without any structure internally shown. There is no indication of how the barrel is triple locked or what structure provides the triple locking. Applicant has no disclosure how to make plural species that are screw threaded, double locking and triple locking. Claims 16-22 lack enablement since they depend from a claim that lacks enablement.

Claims 1-10, 16 and 17 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Upon further review, that amendment to claim 1 wherein the “barrel is slid and rotated to unlock the barrel and open the gate” (made by applicant in the paper dated October 25, 2004) is new matter as there is no basis in the application as filed for this amendment. The specification as originally filed on page 1, ¶2, lines 4-6 indicates the barrel is movable “say slidably or along screw threading” or on page 2, ¶4, lines 1-4 indicates “The barrel may be slidable along the gate ... Alternatively, the barrel may be screw threadedly mounted on the gate” or on page 3, ¶8, lines 1-5 indicates “On the gate 18 is a locking barrel 30 that slides along the gate or is screw-threadedly mounted on the gate ...”. In other words the specification as filed only indicates the exclusive alternative between sliding and screw threaded and not the conjunction “and” as indicated by the limitation in claim 1 that the “barrel is slid and rotated to unlock the barrel and open the gate”. This limitation is therefore new matter. Claims 2 and 3 contain new matter because the added limitation identified above provides a capability to the

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sliding barrel of claim 2 and the screw threaded barrel of claim 3 that is not in the application as originally filed. Claim 4 contains new matter because there is no disclosure in the application as originally filed of the double locking barrel being capable of being "slid and rotated" as contained in the added limitation identified above. Applicant's only disclosure of the double locking barrel is in the nominal recitation found in original claim 4 and in the on page 2, line 15 and there is no indication that the double locking barrel is capable of being slid and rotated. Applicant's only disclosure of the triple locking barrel is in the nominal recitation found in original claim 4 and in the on page 2, line 15. There is no indication in the application as filed of the triple locking barrel be slidable as indicated in claim 16 or being screw threadedly mounted as indicated in claim 17. These indication of the triple locking barrel as being slidable as indicated in claim 16 or screw threadedly mounted as indicated in claim 17 are therefore without any basis in the application as filed and are therefore new matter. The remaining claims contain new matter through their dependence on a claim containing new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 and 15-22 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 15 are indefinite because it is unclear what structure is being described by "the face inward of the body" (claim 1, line 8; claim 15, line 8) since it lacks antecedent basis and it is unclear where it is located on the barrel or whether it is some structure of the C-shaped body.

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The independent claims already indicate that there is a region that is thicker. It is unclear what is being claimed as additional thickness in claims 5 and 16 since its already claimed and this would appear to be a double inclusion and therefore indefinite in these two dependent claims.

The remaining claims are indefinite because they depend from an indefinite claim.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2 and 5 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Hagemann (DE 29610293).

Hagemann (figures 1, 4) teaches carabiner structure including a body 1 that is generally C-shaped with its free ends curved toward each other and forming a gap therebetween, and a gate 4 on one end of the body for closing the gap, the gate having a locking barrel 16, 22 thereon, the barrel portion 22 having a greater thickness 23 on the face of the barrel that is outermost when it is in the position of locking the gate in a closed position. The region of greater thickness 23 extends completely around the barrel. The region of greater thickness 23 is obviously of greater thickness than the barrel portion 22 and nothing in claim 1 precludes this interpretation. The barrel is both slid and rotated to lock and unlock the gate. Since the device always has a portion of the barrel facing inward of the body that is thinner than the portion at the other end no matter

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what the orientation of the barrel it meets the language “wherein this region of greater thickness or strength is thicker than the face inward of the body, when the gate is in an open position”.

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3, 5 and 10 are rejected under 35 U.S.C. §103(a) as being unpatentable over Akeroyd (GB 2077838) in view of Vala (US 1388494).

Akeroyd (figures 1-4) teaches carabiner structure including a body 10 that is generally C-shaped, even with the eyelet portion 11, with its free ends curved toward each other and forming a gap therebetween, and a gate on one end of the body for closing the gap, the gate having a locking barrel 14 thereon, the barrel 14 having a greater thickness 15 on the face of the barrel that is outermost when it is in the position of locking the gate in a closed position. The barrel is rotated to lock and unlock the gate.

The difference is that while the barrel has greater thickness extending outwardly so as to enhance the strength against an inward force, the barrel does not both slide and rotate. However, Vala (figure 1) shows a similar hook structure and that for the closed and locked configuration of figure 1, the barrel 7 has a region of thickness completely around the barrel as compared to the other end of the barrel that is of reduced outer dimension so as to enhance the barrel strength against inward pressure. Since the device always has a portion of the barrel facing inward of the body that is thinner than the portion at the other end no matter what the orientation of the barrel



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it meets the language “wherein this region of greater thickness or strength is thicker than the face inward of the body, when the gate is in an open position”. Further, the barrel slides and rotates through the threaded connection in a similar manner to that of claimed by applicant in dependent claim 3.

The region of greater thickness provides greater strength to the barrel to both inward and sideward pressure combined with material savings by having the thinner tapered region at the other end of the barrel. Applicant is reminded that “[I]n considering the disclosure of a reference, it is proper to take into account not only specific teachings of the reference but also the inferences which one skilled in the art would reasonably be expected to draw therefrom.” In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968). Since locking strength is of importance to the safety of a climber, it would have been obvious to modify the carabiner of Akeroyd so as to enhance its strength against sideward pressure as taught by Vala by increasing the sideward thickness and hence its strength and also provide a connection that both slides and rotates as taught by Vala. In regard to claim 2, the barrel of Vala slides over the threaded portion of the gate. As to claim 3, it would have been obvious to modify the rotation of the barrel of Akeroyd so that the barrel is screw-threaded in view of Vala suggesting that the use of a screw-threaded barrel is desirable because of the added security required by the multiple turns of the barrel to open or close the gate as indicated above. In regard to claim 10, the gate 12 of Akeroyd is considered to be in the shape of a wire since wire can have many configurations.

Claims 4, 15-18 and 22 is rejected under 35 U.S.C. §103(a) as being unpatentable over Akeroyd (GB 2077838) in view of Vala (US 1388494) as applied to claims 1-3, 5 and 10 above, and further in view of Bonaiti (EP 318742).

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Further modification of the carabiner of Akeroyd such that a double locking or triple locking barrel is utilized would have been obvious in view of Bonaiti (figures 1-4) teaching that it is desirable to provide a carabiner with the added security of a double locking barrel 19, 14 wherein a portion of the barrel slides thereby providing greater safety for climbers. In regard to claim 15 the use of a triple locking barrel is considered obvious over Bonaiti if one considers the spring 18 as a third lock over and above the telescoping sleeves. Applicant provides no claimed limitation to distinguish over this interpretation of the carabiner of Bonaiti.

Claims 6-8 are rejected under 35 U.S.C. §103(a) as being unpatentable over Akeroyd (GB 2077838) in view of Vala (US 1388494) as applied to claim 1 above, and further in view of Brainerd et al. (US 5878834).

Further modification of the carabiner of Akeroyd such that material of the barrel is carbon steel, aluminum or stainless steel or has the capability to withstand forces up to 25 kN would have been obvious in view of it being well known in this field of endeavor as evidenced by Brainerd et al. (figures 1-8) that high quality metals with good durability such as stainless steels, 4130-alloy steels, titanium or aluminum are needed for the gate structure (col. 4, lines 19-21). Since increased strength is a desirable characteristic for carabiners thereby providing greater safety to a climber it would have been obvious to modify the carabiner of Akeroyd to use a barrel of adequate strength in view of Brainerd et al. teaching that durability is important in carabiner gate structure and that various metals such as stainless steels, 4130 alloy steels, titanium or aluminum are needed to provide such durability.

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Claim 9 is rejected under 35 U.S.C. §103(a) as being unpatentable over Akeroyd (GB 2077838) in view of Vala (US 1388494) as applied to claim 1 above, and further in view of Nebot (WO 93/25822).

Further modification of the carabiner of Akeroyd such that the gate is clearly solid would have been obvious in view of Nebot (figures 5-8) teaching the use of a solid gate as being desirable for enhanced strength.

Claims 19 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Akeroyd (GB 2077838) in view of Vala (US 1388494) and Bonaiti (EP 318742) as applied to claim 15 above, and further in view of Brainerd et al. (US 5878834).

Further modification of the carabiner of Akeroyd such that material of the barrel is carbon steel, aluminum or stainless steel or has the capability to withstand forces up to 25 kN would have been obvious in view of it being well known in this field of endeavor as evidenced by Brainerd et al. (figures 1-8) that high quality metals with good durability such as stainless steels, 4130 alloy steels, titanium or aluminum are needed for the gate structure (col. 4, lines 19-21). Since increased strength is a desirable characteristic for carabiners thereby providing greater safety to a climber it would have been obvious to modify the carabiner of Akeroyd to use a barrel of adequate strength in view of Brainerd et al. teaching that durability is important in carabiner gate structure and that various metals such as stainless steels, 4130 alloy steels, titanium or aluminum are needed to provide such durability.

Claim 19 is rejected under 35 U.S.C. §103(a) as being unpatentable over Akeroyd (GB 2077838) in view of Vala (US 1388494) and Bonaiti (EP 318742) as applied to claim 15 above, and further in view of Nebot (WO 93/25822).

Further modification of the carabiner of Akeroyd such that the gate is clearly solid would have been obvious in view of Nebot (figures 5-8) teaching the use of a solid gate as being desirable for enhanced strength.

***Response to Arguments***

Applicant's arguments have been fully considered but they are not persuasive.

Applicant's arguments are far broader than the claim language. Applicant infers that recitation of "this region of greater thickness or strength is thicker than the face inward of the body" requires reading into the claim structure not disclosed by Hagemann (DE 29610293) or Akeroyd (GB 2077838). The claim construction as indicated in this rejection and the prior rejection only requires a portion of greater thickness or strength on its face outward of the body when the gate is in a closed position. There is no statement in the claim as to what other structure of the barrel has the lesser thickness in comparison with this portion of greater thickness. The only comparison is with respect to "the face inward of the body" and this is not even associated with the barrel. The rejections have repeatedly indicated this interpretation and applicant has failed to distinguish over this interpretation. There is nothing in the claims to prohibit the interpretation provided. Applicant argues the tertiary references, but these references are seen as properly utilized for the reasons given above. Applicant draws attention to the triple locking barrel. In response the application has been reviewed and the above objections to the drawings and the rejections under 35 U.S.C. 112 first paragraph are made. Applicant has no basis to state that the barrel structure utilized in the art rejections above do not meet the limitations of the manipulations of the barrel because applicant can not point to any structure of

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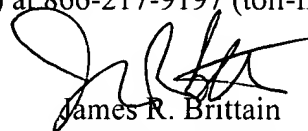
the barrel in applicant's device to show threads, sliding and rotating structure, or distinguish between a double locking and triple locking barrel.

*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB